

FILED
COURT OF APPEALS
DIVISION II

No. 49023-4-II

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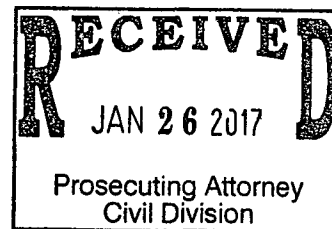
STATE OF WASHINGTON

BY AP
DEPUTY

COURT OF APPEALS

DIVISION II

OF THE STATE OF WASHINGTON



AMENDED REBUTTAL TO BRIEF OF RESPONDENT

David Arthur Darby, Appellant Petitioner, Pro Se acting In Propria Persona

v.

STATE OF WASHINGTON and Individuals Acting in their
Official capacity for the COUNTY OF CLARK
a political subdivision of STATE OF
WASHINGTON,
are the Following:

GREG KIMSEY D.B.A. CLARK COUNTY AUDITOR
DOUG LASHER D.B.A. CLARK COUNTY TREASURER
PETER VAN NORTWICK D.B.A. CLARK COUNTY ASSESSOR
DAVID MADORE D.B.A. CLARK COUNTY COMMISSIONER
EDWARD L. BARNES D.B.A. CLARK COUNTY COMMISSIONER
ANTHONY GOLICK D.B.A. CLARK COUNTY PROSECUTOR
TAYLOR R. HALLVIK D.B.A. CLARK COUNTY DEPUTY PROS.

Introduction to the Rebuttal

Pursuant to constitutional mandates imposed upon public officers by and through their oaths, they have no constitutional authority to oppose the very documents to which they swore

P/M: 1/26/17

their oaths. In the case of Washington State it is the 1878 Constitution of the State of Washington. In fact, there is no valid authority which permits this. Public officers in Washington State routinely violate their oaths, yet are not held to any standard of accountability by the people. When the Congress or any legislature passes an unconstitutional act, fraud was committed, since that legislative body had no constitutional authority to create and implement an unconstitutional act. An unconstitutional statute, code or regulation is no law at all and is not lawfully binding upon American Citizens and Washington Citizens. Yet, the legislative body and government demand that Citizens to obey the unlawful "law". This is blatant fraud. Then, the government attempts to make the Citizen complicit in the fraud by demanding that the Citizen abide by the unconstitutional law, or face punishment in one form or another, for not doing so. I, David Arthur Darby accept the oaths of the public officials including in this case the Judges and Prosecutors. I demand that this court follow the Supreme law of the land in the case of the fraudulent theft of private property. In this case the Court is required to follow the 1878 Constitution of the State of Washington. The oath demanded by the constitution must be adhered to by the Judges and the Prosecutor. This is not just an idea, it is the law of Washington State and not the law of a fictitious Corporation called STATE OF WASHINGTON. Since, I David Arthur Darby have proven in court that I am not a signee of the Corporation of the STATE OF WASHINGTON and I have signed no such contract giving the CORPORATION OF THE STATE OF WASHINGTON jurisdiction over me or my property, I demand that this case be judged on the merits under the Supreme Law of Washington State and the Supreme Law of the United States of America, the 1787 Constitution for the United States of America and the Bill of

Rights 1 thru the original 13th Amendment. As I speak to the Judges, I say: "I accept your oaths of office swearing to uphold my rights pursuant to both the 1878 Constitution of the State of Washington and the 1787 Constitution for the United States of America." I believe you are now saying to yourselves that you (the Judges) did not swear to the 1878 Constitution of the State of Washington and that is partially true. Your oath did not specify the constitution for a very good reason. Your oath is an obfuscation of the fact there is only one lawful Constitution of the State of Washington and that would be the 1878 Constitution of the State of Washington. The people of Washington State were never thought that Governor Miles Moore in 1889 committed fraud against the people and held an unconstitutional constitution convention and did not follow the precepts of the 1878 Constitution. He did not allow the people to vote to remove the 1878 Constitution of the State of Washington. Therefore, your oaths of office are to the 1878 Constitution of the State of Washington and you must follow the Supreme Law of Washington State. If this court decides to not act as the 1878 Constitution of the State of Washington guarantee's David Arthur Darby, Then I, David Arthur Darby am witnessing FOR the record that all appearances, either written or in the flesh, that I, David Arthur Darby make in this Admiralty Appeals court known as the Washington Appeals Court District II of the STATE OF WASHINGTON are pursuant to Rule E-8 applying to special appearance in any Admiralty Court in the STATE OF WASHINGTON.

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Requests to the Court

Defendant moves this court for an order Granting of this court that Taylor Hallvik has violated RCW 36.27.060 by doing the Private Practice of Law while holding a public office

A. Wherefore cause Appellant Petitioner moves this court for an order Granting vacating the order and judgement of Foreclosure as void ab initio. Defendant moves this court for an order of this court that Taylor Hallvik has violated RCW 36.27.060 by doing the Private Practices of Law while holding a public office.

B. Defendant moves this court for an order Granting vacating the order and judgement of Foreclosure as void ab initio.

C. Defendant moves this court for an order Granting of this court that Taylor Hallvik has violated RCW 36.27.060 by doing the Private Practices of Law while holding a public official.

*D. I, David Arthur Darby object to any affidavit or declaration proffered by the **Counter-Defendant & Third Party Defendant's**, Under the Federal Rule of Evidence rule 801(Hearsay Rule) and Under Parole Evidence rule.*

*In general: hearsay testimony is NOT admissible. *There are many exceptions, however, and the exceptions vary by jurisdiction Rule 803 It is an out of court statement made out of court by a person who is not now in court, offered to prove the truth of the matter asserted. If the person making the statement cannot be examined in court to determine if what her/she said was true or not, then the statement is not admissible. If hearsay is testimonial it is bard, under the Confrontation Clause, unless the witness is unavailable and the defendant had prior opportunity to cross examine witness. See *Crawford V. Washington, 124 S. Ct. 1354(2004).*

- E. If this court rules against Appellant Petitioner please provide the court findings of Facts and conclusions of law and the names and address of competent fact witness so that it does not appear that the court willfully participated in a fraud against the people of Washington State.

Rebuttal of Taylor Hallviks Statements on the Respondents Brief

See **Anastasoff Vs. United States**, 223 F.3d 898(8th Cir . 2000). Statements of Counsel, in briefs or oral arguments are not sufficient for motion to dismiss or for summary judgment, **Trinsey Vs. Pagliaro**, D.C. Pa.1964, 229 F. Supp. 647. In **re StacElecs. Sec. Litig.**, 89 F.3d 1399,1403 (9th Cir. 1996);**Jones Vs. General Elec. Co.**,87 F.3d 209, 211 (7th Cir. 1996).

1. Taylor Hallvik cannot provide a declaration to the court. It would be as if the court cannot see that he is an Attorney and As such did not and cannot provide or be a competent fact witness to the court. This finding of a continuing investigation, which forms the foundation of the majority opinion, comes from *statements of counsel* made in the CLARK COUNTYS Brief of Respondent during the appellate process. As we have said of other un-sworn statements, which were not part of the record and therefore could not have been considered by the trial court: “Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case.” *United States v. Lovasco*, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (06/09/77) .
2. The Appellant Petitioner David Arthur Darby has put evidence in the record and has provided testimony to the court under oath.
3. CLARK COUNTY BEING A CLASS COUNTY, Taylor Hallvik Deputy Prosecuting Attorney can represent the county of Clark but cannot represent the employees of the county doing so constitutes Private practice prohibited **RCW 36.27.060**.the employees had to retained counsel at their own expense.
4. Upon information and belief because in the motion for summary judgement he was violation the state statute **36.27.060 by doing the Private Practice of Law while holding a public office**. Was the Second act leaving this court without subject matter jurisdiction?
5. **“In the Manual of Model Civil Jury Instructions for the District Courts of the Ninth Circuit Rule 7.1**

6. ***What is not Evidence*** In reaching your verdict, you may consider only the testimony and exhibits received into evidence. Certain things are not evidence, and you may not consider them in deciding what the facts are. I will list them for you:

A. ***Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What they [may say] [have said] in their opening statements, closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers have stated them, your memory of them controls.***

B. ***Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to object when they believe a question is improper under the rules of evidence. You should not be influenced by the objection or by the court's ruling on it.***

Gonzales v. Buist, (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463. No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not *statements of counsel*, ***Holt v. United States***, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, licable (“[a]n action must be prosecuted in the real party in interest.”),)The standing doctrine “involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise on its exercise. ***Kowalski v. Tesmer***,⁵⁴³

U.S. 125,128-29,125 S.Ct.564,160 L.Ed.2d 519(2004)(quoting Warth v. Seldin,422 U.S.490,498, 95 S.Ct 2197, 45 L.Ed.2d 343 (1975). Constitution Standing under Article III requires, at a minimum, that a party must have suffered some action or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by favorable decision.

RE-ITERATION OF A FEW OF THE MANY AUTHORITIES

ON THE LAW OF VOIDS IN WASHINGTON

Court held that a quiet title action, not an action to vacate the judgment, was the appropriate means for the grantee of a judgment debtor to clear the title of land sold under a *void judgment*. *Krutz*, 25 Wash. at 572-74, 577-78. In *Krutz*, the judgment and subsequent sheriff's sale were void for improper service. *Krutz*, 25 Wash. at 566-78. The court stated that the grantee, who purchased from the judgment debtor, was not a party to the prior judgment and could not have brought a motion to vacate the *void judgment*. *Krutz*, 25 Wash. at 566-78. Similarly, Mueller, having an interest in the property as the purchaser from Griffin's estate, made a collateral attack on the validity of the sheriff's sale through this quiet title action

If a motion to relieve a party from judgment is based on mistake, inadvertence, excusable neglect, newly discovered evidence or irregularity in obtaining the judgment, it must be made within a year of the judgment's entry. CrR 7.8(b). A motion based on a *void judgment* or "{a}ny other reason justifying relief from the operation of the judgment" may be brought within a reasonable time. CrR 7.8(b)(5); *State v. Clark*, 75 Wn. App. 827, 830, 880 P.2d 562 (1994)

A judgment is void when the court does not have personal or subject matter jurisdiction, or "lacks the inherent power to enter the order involved." *Petersen*, 16 Wash. App. at 79 (citing *Bresolin*, 86 Wash. 2d at 245; *Anderson*, 52 Wash. 2d at 761) (additional citation omitted). A trial court has no discretion when faced with a *void judgment*, and must vacate the judgment "whenever the lack of jurisdiction comes to light." *Mitchell v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990) (collateral challenge to jurisdiction of pro tem judge granting summary judgment properly raised on appeal) (citing *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash. App. 783, 790, 790 P.2d 206 (1990)). As discussed above, since the judgment is void, this collateral attack through the quiet title action was proper.

A challenge to a *void judgment* can be brought at any time. *Matter of Marriage of Leslie*, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989) (citing *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370, 83 P.2d 221 (1938) (additional citation omitted); CR 60(b)(5).

A trial court's decision to grant or deny a motion to vacate a default judgment is generally reviewed for an abuse of discretion.; however, a court has a nondiscretionary duty to vacate a *void judgment*. *Leen*, 62 Wash. App. at 478; *In re Marriage of Markowski*, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash. App. 517, 520, 731 P.2d 533 (1987).

A motion to vacate under CR 60(b)(5) "may be brought at any time" after entry of judgment. *Lindgren v. Lindgren*, 58 Wash. App. 588, 596, 794 P.2d 526 (1990), review denied, 116 Wash. 2d 1009, 805 P.2d 813 (1991); see also *Brenner v. Port Bellingham*, 53 Wash. App.

182, 188, 765 P.2d 1333 (1989) ("motions to vacate under CR 60(b)(5) are not barred by the 'reasonable time' or the 1-year requirement of CR 60(b)"). Void judgments may be vacated regardless of the lapse of time. *In re Marriage of Leslie*, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989). Consequently, not even the doctrine of aches bars a party from attacking a **void judgment**. *Marriage of Leslie*, 112 Wash. 2d at 619-20.

Brenner provides a striking example of how meaningless the passage of time is in the context of a **void judgment**. There, a default judgment was entered in 1969 condemning all interests in certain real property and vesting title in the Port of Bellingham. In 1985, Brenner sued the Port for damages resulting from the condemnation action and alleged in part that the Port had failed to satisfy the statutory requirements of service by publication. The trial court denied Brenner's motion for summary judgment, ruling that the Port's error was merely an irregularity and, thus, voidable under CR 60(b)(1) rather than void under CR 60(b)(5). The trial court also found that Brenner had failed to move to vacate the judgment within a reasonable time as required by CR 60(b)(1). 53 Wash. App. at 185. The Court of Appeals reversed, holding that the Port's failure to strictly comply with the requirements of service by publication meant the court had no jurisdiction over Brenner when it entered the 1969 judgment condemning her interest in the property. Recognizing that a default judgment entered without valid service is void and may be vacated at any time, the court remanded the case to the trial court with instructions to vacate the 16-year-old judgment. *Brenner v. Port Bellingham* 53 Wash. App. at 188. In the present case, the trial court expressly found Allstate's service of process was defective. "Proper service of the summons and complaint is essential to invoke personal

jurisdiction over a party, and a default judgment entered without proper jurisdiction is void." *Marriage of Markowski*, 50 Wash. App. at 635-36; see also *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wash. App. 480, 486, 674 P.2d 1271 (1984). Because a party may move to vacate a **void judgment** at any time (*Marriage of Leslie*, 112 Wash. 2d at 618-19), the trial court erred by finding that *Khani* failed to bring his motion within a reasonable time. Further, as discussed in detail below, the trial court's finding that *Khani* had actual notice of the default judgment through the DOL notice is irrelevant on these facts. More significantly, the trial court erred by denying *Khani's* motion because it failed to fulfill its nondiscretionary duty to vacate a **void judgment**. See *Leen*, 62 Wash. App. at 478; *Marriage of Markowski* 50 Wash. App. at 635. Thus, the trial court's order must be reversed and the case remanded with instructions to vacate the default judgment and quash the writ of garnishment. See *Marriage of Leslie*, 112 Wash. 2d at 618 (a vacated judgment has no effect, and the parties' rights are left as though the judgment had never been entered).

A **void judgment** is always subject to collateral attack. *Bresolin v. Morris*, 86 Wash. 2d 241, 245, 543 P.2d 325 (1975). A **void judgment** must be vacated whenever the lack of jurisdiction comes to light. *Mitchell v. Kitsap Cy.*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990). "A **void judgment** may be attacked collaterally as well as directly. It is entitled to no consideration whatever in any court as evidence of right, *Kizer v. Caufield*, 17 Wash. 417, 49 P. 1064. A **void judgment** is defined in *Dike v. Dike*, 75 Wash. 2d 1, 7, 448 P.2d 490 (1968).

These historical rules are set against the fact that the law of reopening estates is derived from the law of vacating judgments. *In re Jones' Estate*, 116 Wash. 424, 426, 199 P. 734 (1921).

With the advent of CR 60, additional justifications upon which to reopen an estate may exist. Specifically, CR 60(b)(4) allows the court to vacate a judgment procured through 'fraud . . . , misrepresentation, or other misconduct of an adverse party.' CR 60(b)(4). Of course, a '**void judgment**' is also unenforceable. CR 60(b)(5). CR 60 also contain a catchall provision, which permits the court to vacate a judgment for 'any other reason justifying relief from the operation of the judgment.' CR 60(b)(11).

It is true that, under CR 60(b)(5), a court may vacate a **void judgment** at any time. A judgment is void if entered by a court without jurisdiction. *In re Marriage of Ortiz*, 108 Wn.2d 643, 649, 740 P.2d 843 (1987). Where the judgment was procured fraudulently so that it was void and its invalidity appeared on the face of the record so that either on the Henkles' or on the commissioner's own motion, the court commissioner had the power to vacate the **void judgment** without notice to McCormick. *Morrison v. Berlin*,. the court commissioner did not manifestly abuse his discretion here. *State v. Scott*.

Assuming the judgment to be void, the primary question is: Have they such right? There is no question but that a court has inherent power to purge its records of void judgments. It may do so of its own motion. It must be conceded that a party to the record, adversely affected by a **void judgment**, may have the judgment vacated as a matter of right -- and this without a showing of a meritorious defense. *Hole v. Page*, 20 Wash. 208, 54 P. 1123; *Batchelor v. Palmer*, 129 Wash. 150, 224 P. 685. The parties to the record (the Pumneas) in this case, however, are not adversely affected by the judgment in question. For they have parted with their interest in the

property, and the judgment has been satisfied. An order vacating the judgment would affect their rights or liabilities in no manner whatsoever. As to them it is 'functus officio, wherefore the question of the legality or illegality of its intention is a mere abstraction with which it is no part of the business of appellate courts to deal.' *Davis v. Blair*, 88 Mo.App. 372.

Miscellaneous Facts

Documents in support of CLARK COUNTYS RESPONSE were not signed and notarized, therefore there was no competent fact witness brought in to court to testify on their behalf.

Appellant (David Arthur Darby) was and is the only sworn in witness providing evidence to the court whose written testimony to the court is duly notarized and witnessed

This case is strictly a Constitutional case and has been from the beginning. I, David

Arthur Darby has always been a Private Natural Born Sovereign Citizen of

Washington State. My law is the 1878 Constitution of the State of Washington and

the 1787 Constitution for the United States of America and it's Bill of Rights 1 thru the original 13th Amendment. I have presented my case under the constitution and then I

have included case law in support of my situation because all of the judges and

Prosecutors that I have met are not following their oaths to the constitutions.

Therefore, I am forced to supplement my constitutional case with case law that

supports my position. I, David Arthur Darby am witnessing FOR the record that all

appearances, either written or in the flesh, that I, David Arthur Darby

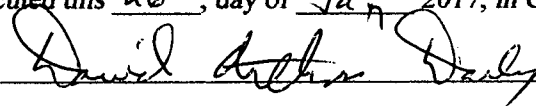
make in this Admiralty Appeals court known as the Washington Appeals Court
District II of the STATE OF WASHINGTON are pursuant to Rule E-8 applying to
special appearance in any Admiralty Court in the STATE OF WASHINGTON

Respectfully submitted,

VERIFICATION

I, **David Arthur Darby Private** Sovereign State Citizen pursuant to Article 2, Section 3 of 1878 Constitution of the State of Washington, am the defendant in the above-entitled action and I have read the above Appeals Court Cause # 49023-4-II. I am competent to testify to the matters stated herein and I have personal knowledge of the matters stated herein except as to those matters stated upon belief or information and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true, correct, complete, and not misleading.

Executed this 26th, day of Jan, 2017, in County of Clark, State of Washington.



David Arthur Darby, Private
Private Sovereign State Citizen, Pursuant to Article 2, Section 3
of 1878 Constitution of the State of Washington
P.O. Box 772 Amboy, Washington
Zip exempt (Not Federal District)

NOTARY

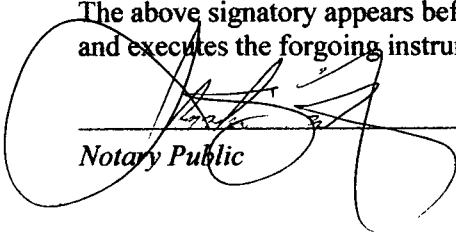
SEAL

[STATE] Washington) s.s.:

[COUNTY] Clark)

On this 26th day of January, 2017,

The above signatory appears before me personally with picture ID
and executes the forgoing instrument and acknowledges this to be their free act and deed.


Notary Public

My Commission Expires: 4/1/20

FILED
COURT OF APPEALS
DIVISION II

2017 JAN 30 AM 9:22

STATE OF WASHINGTON

BY AP
DEPUTY

PROOF OF PERSONAL SERVICE

Case name(s): David A. Darby vs Clark County

Case Number(s): 49023-4-II

1. At the time of service I was at least 18 years of age and not a party to this legal action.

My mail location is: 5502 NE 40th St, Vancouver, Washington

2. I personally delivered the following document(s) as identified here: Affidavit of Special Appearance and Amended Rebuttal to Brief of Respondent.

3. I personally delivered the document(s) identified above as follows:

Person served: Taylor Hallvik Prosecuting Attorney

Address where delivered: 1300 Franklin St. Suite 380

Date: January 26, 2017

Person served: Taylor Hallvik

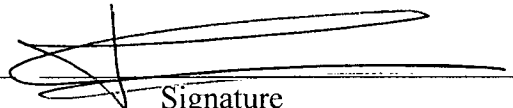
Address where delivered: 1300 Franklin St. Third floor

I declare under the penalty of perjury, under the laws of the state of Washington, under penalty of bearing false witness pursuant to the Common Law and our God-Source Creator, that the foregoing is true, correct and not misleading.

Dated: JANUARY 26, 2017

DOLORES AQUINO

Print name



Signature

See Attached Front Pages of documents served with acceptance stamps.

P/M: 1/26/17